



उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(21)

मामला क्रमांक सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	Cr.A. No. 1098 OF 2001 [Single Bench; Hon'ble Mr. Justice Dharendra Mishra] <u>APPELLANT/</u> <u>APPLICANT</u> <u>(IN JAIL)</u> Vs <u>RESPONDENT</u> <u>13.12.2007</u> Shri Akhil Agrawal, Counsel for the appellant. Shri Sandeep Yadav, Dy Govt. Advocate for the State. Heard. This criminal appeal is directed against the judgment of conviction and order of sentence dated 12th October 2001 passed in Sessions Trial No.152/2001, whereby the learned II Additional Sessions Judge, Mahasamund has convicted the appellant under Sections 363, 366, 376(1), 506(II) and 343 of the IPC and sentenced him to undergo R.I. for 7 years, pay a fine of Rs.500/-, R.I. for 10 years, pay a fine of Rs.500/-, R.I. for 10 years, pay a fine of Rs.1,000/-, R.I. for 7 years, pay a fine of Rs.500/-, R.I. for 2 years and pay a fine of Rs.500/- respectively with usual default clauses. All the sentences have been directed to run concurrently.	Benuram, S/o Madhuram, aged about 24 years, R/o. Village-Mongra, P.S. Chhura, District-Raipur(C.G.) State of Chhattisgarh, through- P.S. Bagbahara.



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	2. Case of the prosecution, in brief, is that the appellant eloped with the minor prosecutrix on 21.01.2001. The parents of the prosecutrix searched for her, however, when she could not be traced missing report was lodged in the police station on 25th January 2001. She was recovered on 30st January 2001 and the accused was accompanying her. She was brought to Village Khairatkala and thereafter report was lodged by her on 31st January 2001. During investigation prosecutrix was sent for medical examination to Community Health Centre Bagbahara where Dr. Smt. Asha Mishra examined her and gave her report of Ex.P/16-A. Her birth certificate of Ex.P-10, marksheet of Ex.P-11 and Ex.P-12 were seized during investigation. 3. After completing investigation charge sheet was filed in the Court of Additional Chief Judicial Magistrate, Mahasamund and the same was received on transfer for trial by learned Additional Sessions Judge. 4. During trial prosecution examined 8 witnesses in all. Thereafter statement of the accused was recorded in which he denied the evidence appearing against him in the prosecution case and pleaded innocence and false implication. However, the learned trial Court after	



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	hearing counsel for the respective parties convicted and sentenced the appellant as mentioned in Paragraph 1 of this judgment. 5. Learned counsel for the appellant submits that the prosecutrix accompanied the appellant for a period of 10 days. She went with him to various places and did not complain to anyone and she accompanied him in the bicycle. Thus, over all conduct of the prosecutrix goes to show that she was a consenting party. He further argued that from the medico legal examination report of the prosecutrix it is clear that she did not sustain any external or internal injury on her person. She was accustomed to sexual intercourse as her hymen has been found to be old rupture and as such version of the prosecutrix is not corroborated from the medical evidence also. Finally, it was argued that even if it is held that she was less than 16 years of age at the time of incident, looking to the overall circumstances, conduct of the prosecutrix and age of the appellant, there were no aggravating circumstances for convicting and sentencing the appellant for 10 years RI under Section 376 (1). 6. On the other hand learned counsel for the State has supported the impugned judgment. 7. Learned trial Court on the basis of the statement of Ganguram, father of the prosecutrix (P.W.2), birth certificate of the	



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	prosecutrix (Ex.P-10), which has been duly proved by Kotwar-Himmatlal (P.W.5), mark-sheet of Ex.P-11 & P-12 proved by Khejanlal (P.W.3) has recorded a finding that her date of birth was 25th June 1987 and thus she was minor on the date of incident i.e. 21st January 2001 and was in the lawful custody of her father Ganguram (P.W.2). The above evidence available on record stands unrebutted in the cross-examination of these witnesses and the accused has not denied this fact in his statement under Section 313 of the Cr.P.C. 8. The prosecutrix has been examined as P.W.1. The sum and substance of her deposition is that the accused was invited to the engagement function of her sister Yad Bai. Accused is a married person, he took the prosecutrix to Mahasamund on the pretext of going to Cinema Hall, however, he took her to Mongara Forest and there he committed forcible sexual intercourse with her. She has also alleged that after the commission of rape there was bleeding from her vagina. The appellant repeated the offence. Thereafter, he used to keep her in his home in the night and every morning he used to take her to the forest and this continued for a week till she was spotted by her brother Dogar Singh and 4-5 other persons, who had accompanied him. They were able to apprehend the accused who tried to flee.	



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	9. Ganguram (P.W.2), father of the prosecutrix has also corroborated the statement of prosecutrix that the accused was invited in the engagement ceremony. However after the ceremony when he returned to his home he found both of her daughters including the prosecutrix missing. Initially he searched for her and when she could not be traced, report was lodged on 25th mentioning therein that the appellant has eloped with his daughter. On getting information that the appellant was hiding in the forest he went to Mongara Forest on 29th with other villagers and recovered his daughter and caught Benuram from there. 10. Similar is the statement of Khejanlal (P.W.3) who has also corroborated the version of the prosecutrix and her father. The defence has not been able to elicit anything which makes their version untrustworthy and unreliable. 11. Dr. Smt. Asha (P.W.8) who has proved the medico legal examination report of Ex.P/16-A of the prosecutrix, has stated that she examined the prosecutrix on 31st January 2001 in the evening and on examination she did not notice any external or internal injury on the person of the prosecutrix. Her vagina was fully developed and on internal examination she found old rupture of hymen, the vagina admitted two fingers easily, there were no tenderness in the vagina of	



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	the prosecutrix, she was accustomed of sexual intercourse and there was no sign of resent intercourse. 12. It is true that the prosecutrix remained in the custody of present appellant for a period of one week. According to the prosecutrix, they used to sleep in the home of the appellant and he used to take her to the Forest in the day time. Thus, considering the conduct of the prosecutrix and her medico legal examination report, the allegation that she was abducted and raped on the threat of her life, appears to be improbable and untrustworthy. However even if it is presumed that the prosecutrix accompanied the accused of her own free will, considering the positive evidence regarding her age that she was less then 14 years on the date of incident, consent, if any, given by her is of no consequence and the offence under Sections 363, 366, 376 (1) is clearly made out. However conviction of the appellant under Sections 506 (II) and 343 of the IPC can not be sustained. 13. After going through the arguments advanced by the learned counsel for the appellant that there is no aggravating circumstance to sentence the appellant under Section 376(1) for 10 years, this Court is of the opinion that ends of justice would be served if jail sentence of 10 years' RI of the appellant under Section 376(1) of the IPC is reduced to seven years.	



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	14. In the result, the appeal is partly allowed. Conviction of the appellant under Section 506 (II) and 343 of the IPC is set aside and he is acquitted of the above charges, However, while maintaining his conviction under Sections 363, 366 and 376(1), the jail sentence of 10 years' RI imposed upon the appellant by the trial Court u/s 376(1) of IPC is hereby modified and in place thereof, he is sentenced to undergo RI for 7 years. Rest of the sentences including the fine sentences under Sections 363, 366, 376(1) of IPC shall remain as it is.	Sd/- DHIRENDRA MISHRA Judge

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